



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of Claims Against the Dealer Bond
of Champion Motors

Case No.: TR-01-0036

FINAL DECISION

On April 26, 2001, John Endejan filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of Donald E. Lavrenz, d/b/a Champion Motors. The claim along with documents gathered by the Department in its investigation of the claim was referred to the Division of Hearings and Appeals. A Preliminary Determination based on the documentation contained in the file and required by Wis. Admin. Code, § Trans 140.26(4)(a) was issued on September 20, 2000. On October 12, 2001, Donald E. Lavrenz filed an objection to the Preliminary Determination pursuant to Wis. Admin. Code § Trans 140.26(5)(b). Pursuant to due notice a hearing under Wis. Admin. Code § Trans 140.26(6) was conducted in this matter on November 7, 2000, in Fond du Lac, Wisconsin. Mark J. Kaiser, Administrative Law Judge, presiding.

In accordance with Wis. Stat. § 227.47 and 227.53(1)(c) the PARTIES to this proceeding are certified as follows:

John Endejan
27 Maria Lane
Fond du Lac, WI 54935

Donald E. Lavrenz
Champion Motors
400 South Military
Fond du Lac, WI 54935

Capitol Indemnity Corporation
P. O. Box 5900
Madison, WI 53705-5900

The Preliminary Determination issued in this matter found that the failure of the Dealer to discover during a reasonable presale inspection that the vehicle purchased by Mr. Endejan had been damaged in an accident and to disclose that fact to Mr. Endejan in response to his direct question on the subject constituted a violation of Wis. Admin. Code § Trans 139.03(1). The Preliminary Determination further found that as a result of this violation, Mr. Endejan sustained

a loss in the amount of \$5,671.28. At the hearing, the Dealer presented the testimony of Norman Haas, the salesperson who sold the vehicle to Mr. Endejan, and Ronald Margis, the previous owner of the vehicle.

In his testimony, Mr. Haas denied he told Mr. Endejan that the vehicle had not been in an accident. Mr. Haas testified that in response to Mr. Endejan's question whether the vehicle had been involved in an accident, he told him that the only way he could tell if the vehicle had been in an accident was if the title had been branded. This response is misleading. Pursuant to Wis. Stat. § 342.10(3), the only accident related information that would appear as a title brand is if the vehicle was previously a salvage vehicle or if the vehicle had been transferred to an insurer upon payment of an insurance claim. The evidence in the record indicates that the condition of the vehicle at the time it was purchased by the Endejans was such that a reasonable presale inspection of the vehicle would have disclosed a sufficient basis to believe that the vehicle had been in an accident. Although there is no evidence of the existence of repaired structural damage that would have had to been disclosed on the Wisconsin Buyers Guide, the Dealer had or should have knowledge that the vehicle had been in an accident. This information should have been provided to Mr. Endejan in response to his question.

Additionally, Mr. Endejan provided undisputed testimony at the hearing that he was concerned about the front passenger side window was rattling during the test drive. Prior to purchasing the vehicle and asked the Dealer about the window and was told it was fine. This window malfunctioned two weeks after delivery of the vehicle to Mr. Endejan. Mr. Haas's statement that the window was fine without any apparent knowledge whether this was true is a violation of Wis. Admin. Code § Trans 139.03(1). The fact that Mr. Endejan began experiencing electrical problems with the vehicle immediately after accepting delivery of the vehicle indicates that the problems existed at the time he purchased the vehicle.

This Final Decision still finds that the Dealer violated Wis. Admin. Code 139.03(1); however, after further consideration the seriousness of the violation does not warrant the remedy ordered. Mr. Margis testified that he was not aware of any of the problems reported by Mr. Endejan when he sold the vehicle to the Dealer. There is also no evidence that the Dealer should have discovered the electrical problems during a reasonable presale inspection. However, if Mr. Endejan had been aware of the vehicle's accident history, he likely would have had the vehicle inspected more carefully before purchasing it or negotiated a lower purchase price for the vehicle. Mr. Endejan did sustain a loss as a result of the violation committed by the Dealer. As stated in the Preliminary Determination, the amount of the loss is the difference in the value of the vehicle as the Dealer represented its condition and the condition of the vehicle Mr. Endejan actually purchased.

The series of electrical problems Mr. Endejan experienced were apparently the result of faulty repairs performed after one of the accidents in which the vehicle was involved. The amount of his loss is the cost of repairing the electrical problems. Mr. Endejan has the burden of proving the amount of his loss. Mr. Endejan has provided documentation of \$370.34 he has paid for repairs of electrical problems. Mr. Endejan indicated that the vehicle has not run since December 2000, apparently as the result of another electrical problem. Unfortunately, the most recent problem has not been diagnosed and there is no estimate of the cost to repair the problem.

Because of the uncertainty of the cost to repair the most recent problem, the Preliminary Determination directed the Dealer to buy back the vehicle. However, after further consideration, it is unfair to the Dealer to require the Dealer to buy back the vehicle because of Mr. Endejan's failure to obtain an estimate of the cost to repair the most recent problem with the vehicle. Accordingly, the Preliminary Determination is amended to only allow the portion of the claim for the cost of the repairs that Mr. Endejan has substantiated. In all other respects the Preliminary Determination is adopted as the Final Decision in this matter.

FINDINGS OF FACT

1. Champion Motors (Dealer) is a motor vehicle dealer licensed by the Wisconsin Department of Transportation pursuant to Wis. Stat. § 218.0111. The Dealer's facilities are located at 400 South Military, Fond du Lac, WI, 54935.
2. The Dealer has had a surety bond in force from January 1, 1995 to the present date (Bond No. LP588188 from Capitol Indemnity Corporation).
3. On September 29, 2000, John Endejan purchased a 1990 Cadillac Sedan de Ville, identification number 1G6CD5330L4300464, from the Dealer. Mr. Endejan paid \$5,482.00, including tax and registration fees, for the vehicle. The Wisconsin Buyers Guide displayed on the vehicle indicated no problems with any of the components listed on the disclosure form and that all listed equipment was legal. On the purchase contract, the Dealer agreed to check the air conditioning, change the transmission fluid, install a new windshield, and replace the courtesy light on the left side of the vehicle.
4. At the time Mr. Endejan accepted delivery of the vehicle, the courtesy light had not been repaired. Soon after accepting delivery of the vehicle, Mr. Endejan experienced a series of electrical problems with the vehicle. In a letter addressed to the Dealer, Mr. Endejan described the problems with the vehicle as follows:

On October 7th-8th the cruise control didn't work. On October 14th in Minneapolis, the passenger window I had inquired about, went down and broke. Shortly after that the lights went out on the car. A week later, the same lights went out. We find out it was due to "fried" wires in left back side caused from NO cover on the light. The one I NEVER received per our purchase agreement.

As I spoke to you, Don, on the 28th of December, 2000, the car wouldn't start due to a power loss occurring since the day we purchased the car. All these things were checked on the window sticker as working properly.

5. On January 3, 2001, Mr. Endejan filed a complaint with the Wisconsin Department of Transportation—Dealer Section (Dealer Section) against the Dealer. The investigator from the Dealer Section was unable to resolve the complaint and on April 26, 2001, Mr. Endejan filed a claim against the surety bond of the Dealer. The amount of the bond claim is

\$6,125.71 and is itemized as \$5,482.00 representing the original purchase price of the vehicle plus \$643.71 representing the cost of repairs to the vehicle.

6. In his complaint, Mr. Endejan alleges that prior to purchasing the vehicle he asked the salesperson whether the vehicle had been involved in an accident and was told it had not. At the hearing, Mr. Haas testified that he answered the question by saying that he could not tell whether the vehicle had been involved in an accident unless the title had been branded. One of the mechanics who subsequently made repairs to the vehicle indicated that the vehicle had probably been in an accident. The investigator from the Dealer Section inspected the vehicle during his investigation and concluded that the vehicle had been in an accident and that the Dealer should have discovered this during a reasonable presale inspection.¹

Additionally, in his report, the investigator from the Department also indicates that he was told by a mechanic who made repairs to the subject vehicle that the “wiring was very bent up on the passenger side front window, [the mechanic] feels the vehicle was in an accident and the repairs were marginal.” Mr. Endejan stated he would not have purchased the vehicle if he had been aware of its accident history. Accordingly, Mr. Endejan has sustained a loss as the result of the Dealer’s failure to accurately disclose the vehicle’s history. The Dealer’s failure to accurately disclose the vehicle’s history constitutes a violation of Wis. Admin. Code § Trans 139.03(1). A violation of Wis. Admin. Code § Trans 139.03(1) is, in turn, a violation of Wis. Stat. §§ 218.01(3)(a)4 and/or 14.

7. The failure of the Dealer to discover that the vehicle purchased by Mr. Endejan had been damaged in an accident during a reasonable presale inspection and to disclose this fact to Mr. Endejan in response to his direct question on the subject constitutes a violation of Wis. Admin. Code § Trans 139.03(1).² Mr. Endejan sustained a loss as a result of the Dealer violation of Wis. Admin. Code § Trans 139.03(1).

¹ The investigator later confirmed this conclusion by running a check on the vehicle through the NICB. The NICB check came back with three insurance claims for accidents. The dates of the accidents were January 23, June 20, and July 26, all of 1996.

² Wis. Admin. Code § Trans 139.03(1), provides:

The use of false, deceptive or misleading advertising or representations by any licensee to induce the purchase of a motor vehicle constitutes an unfair practice and is prohibited.

8. The amount of loss sustained by Mr. Endejan is the amount it would cost to put the vehicle into the condition represented by the Dealer. Mr. Endejan submitted to the Department documentation substantiating the payment of \$370.34 in repairs of electrical problems.³ These documented repair costs are as follows:

Dollar Figures	Related Repairs List
\$ 78.75	Diagnostic time—draw on battery (accident repair)
\$ 139.59	Repair inoperative passenger window (accident repair)
\$ 78.50	Repair inoperative tail lights, repair faulty wiring (accident repair)
\$ 73.50	Repair damaged wiring in door (accident repair)
\$ <u>370.34</u>	Total

Mr. Endejan indicates in his bond claim that he stopped having the vehicle repaired in December of 2000 and it has not “started or run since then.” Without a diagnosis of the most recent problems with the vehicle and an estimate to repair those problems, one can not determine an appropriate amount for the bond claim for this problem. Mr. Endejan has the burden proof for the bond claim. He has not provided documentation to support a claim for the most recent electrical problems with the vehicle

9. The loss sustained by Mr. Endejan was caused by an act of the Dealer that would be grounds for the suspension or revocation of its motor vehicle dealer license. Accordingly, the claim is allowable. Mr. Endejan has provided documentation to support a claim in the amount of \$370.34.

10. The bond claim was filed within three years of the ending date of the one-year period the bond issued by the Capital Indemnity Corporation was in effect and is, therefore, a timely claim.

11. Mr. Endejan’s claim arose on September 29, 2000, the day he purchased the vehicle that is the subject of his claim against the bond of the Dealer. The bond claim was filed within three years of the ending date of the period the Capitol Indemnity Corporation bond was in effect and is, therefore, a timely claim.

³ At least one other problem, the malfunctioning cruise control, was repaired by the Dealer at no cost to Mr. Endejan.

DISCUSSION

The procedure for determining claims against dealer bonds is set forth at Wis. Admin. Code Chapter Trans 140, Subchapter II. Wis. Admin. Code § Trans 140.21(1) provides in relevant part:

A claim is an allowable claim if it satisfies each of the following requirements and is not excluded by sub. (2) or (3):

(a) The claim shall be for monetary damages in the amount of an actual loss suffered by the claimant.

(b) The claim arose during the period covered by the security.

(c) The claimant's loss shall be caused by an act of the licensee, or the [licensee's] agents or employees, which is grounds for suspension or revocation of any of the following:

1. A salesperson license or a motor vehicle dealer license, in the case of a secured salesperson or motor vehicle dealer, pursuant to s. 218.01 (3) (a) 1. to 14., 18. to 21., 25. or 27. to 31., Stats. [*recodified as §§ 218.0116(1)(a) to (gm), (im) to (k), (m), and (n) to (p) in Wis. Stats. (1999-2000)*].

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(d) The claim must be made within 3 years of the last day of the period covered by the security. The department shall not approve or accept any surety bond or letter of credit which provides for a lesser period of protection.

Accordingly, to allow the claim, a finding must be made that the Dealer violated one of the sections of Wis. Stat. § 218.0116(1), identified in Wis. Admin. Code § Trans 140.21(1)(c)1, and that the violation caused the loss claimed. A salesperson for the Dealer indicated to Mr. Endejan that he did not know whether the vehicle had been involved in an accident when, based upon a reasonable presale inspection, he knew or should have known that it had been. This false statement made to induce Mr. Endejan to purchase the vehicle constitutes a violation of Wis. Admin. Code § Trans 139.03(1).

The various electrical problems Mr. Endejan began experiencing immediately after he purchased the vehicle were apparently the result of faulty repairs performed after the accidents. Mr. Endejan indicated that he would not have purchased the vehicle if he had known that it had been in an accident. Accordingly, the cost of the repairs to the vehicle's electrical system are a loss sustained by Mr. Endejan as a result of the Dealer's failure to disclose that the vehicle had been in an accident.

CONCLUSIONS OF LAW

1. John Endejan's claim arose on September 29, 2000, the date he purchased the subject vehicle from Champion Motors. The surety bond issued to Champion Motors by Capitol Indemnity Corporation covers a one-year period commencing on January 1, 2000. The claim arose during the period covered by the surety bond.
2. John Endejan filed a claim against the motor vehicle dealer bond of Champion Motors on April 26, 2001. The bond claim was filed within three years of the last day of the period covered by the surety bond. Pursuant to Wis. Admin. Code § Trans 140.21(1)(d) the claim is timely.
3. John Endejan's loss was caused by an act of Champion Motors which would be grounds for suspension or revocation of its motor vehicle dealer license. Pursuant to Wis. Admin. Code § Trans 140.21(1)(c) the claim is allowable. Mr. Endejan has provided documentation to support a claim in the amount of \$370.34.
4. The Division of Hearings and Appeals has authority to issue the following order:

ORDER

The claim filed by John Endejan against the motor vehicle dealer bond of Champion Motors is APPROVED in the amount of \$370.34. Capitol Indemnity Corporation shall pay Mr. Endejan this amount for his loss attributable to the actions of Champion Motors.

Dated at Madison, Wisconsin on December 7, 2001.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By: _____

Mark J. Kaiser
Administrative Law Judge

NOTICE

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Division. This notice is provided to insure compliance with Wis. Stat. § 227.48 and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Division of Hearings and Appeals a written petition for rehearing pursuant to Wis. Stat. § 227.49. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.

2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Any petition for judicial review shall name the Division of Hearings and Appeals as the respondent. Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. §§ 227.52 and 227.53 to insure strict compliance with all its requirements.